In the Supreme Court of the United States.

OCTOBER TERM, 1918.

THE UNITED STATES, APPELLANT,
v.
ROBERT A. LAUGHLIN, APPELLEE. } No. 200.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is an appeal from a judgment against appellant in the sum of $200. The facts in the case are typical of a large group of cases of like character. It is brought under section 2 of the act of March 26, 1908 (35 Stat., 48), for the repayment of an alleged excess charge exacted of appellee when he made preemption cash entry, November 20, 1878, for a tract of 160 acres of public land in sec. 33, T. 5 S., R. 12 E., W. M., in The Dalles, Oreg., land district.

The land purchased is within the primary limits of the grant to the Northern Pacific Railway Company—that is, within 40 miles of the line of its route along the Columbia River to Portland, Oreg., as shown by its map of general route filed with the Interior Department August 13, 1870.

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The coterminous portion of the contemplated line of railway, however, was never constructed, nor was the map of definite location thereof ever filed; and the corresponding portion of its land grant was forfeited by the act of September 29, 1890 (26 Stat., 496).

On February 14, 1872, nearly seven years prior to preemption of said land, the Interior Department issued an order withholding from disposition all odd-numbered sections of public land within the primary limits indicated by said map of general route, and increasing in price to $2.50 per acre the even-numbered sections within said limits.

This suit was brought on the theory that the price of public land in odd-numbered sections within said limits, open to preemption, was $1.25 an acre when this entry was made. The Court of Claims found as facts the entry and payment, the situation of the land, that the map of definite location was never filed, and the line opposite to the land never constructed; that the grant was forfeited by the act of 1890; that under the act of 1908 request was made of the Secretary of the Interior for refund of $200, which was denied, and that plaintiff was entitled to judgment for $200.

ASSIGNMENT OF ERRORS.

The court erred:

First. In assuming jurisdiction of this case.

Second. In rendering judgment for plaintiff.

Third. In not dismissing the petition.

BRIEF OF ARGUMENT.

I.

The lower court has no jurisdiction of the subject-matter of this suit.

II.

The fees and commissions paid by appellant were lawfully demanded and collected, and hence the judgment should be reversed.

ARGUMENT.

FIRST.

The lower court has no jurisdiction of the subject matter of this suit.

The act of March 26, 1908 (35 Stat. 48), provides:

> SECTION 1. That where purchase moneys and commissions paid under any public-land law have been or shall hereafter be covered into the Treasury of the United States under any application to make any filing, location, selection, entry, or proof, such purchase moneys and commissions shall be repaid to the person who made such application, entry, or proof, or to his legal representatives, in all cases where such application, entry, or proof has been or shall hereafter be rejected, and neither such applicant nor his legal representatives shall have been guilty of any fraud or attempted fraud in connection with such application.
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> SEC. 2. That in all cases where it shall appear to the satisfaction of the Secretary of the Interior that any person has heretofore

or shall hereafter make any payments to the United States under the public-land laws in excess of the amount he was lawfully required to pay under such laws, such excess shall be repaid to such person or to his legal representatives.

SEC. 2. That when the Commissioner of the General Land Office shall ascertain the amount of any excess moneys, purchase moneys, or commissions in any case where repayment is authorized by this statute, the Secretary of the Interior shall at once certify such amounts to the Secretary of the Treasury, who is hereby authorized and directed to make repayment of all amounts so certified out of any moneys not otherwise appropriated and issue his warrant in settlement thereof.

Prior to the passage of the foregoing act the lower court had no jurisdiction over such claims as the one here presented. In the case of *United States* v. *Edmondston*, 181 U. S. 500, it was held that, in the statutes conferring jurisdiction on the Court of Claims, Congress did not intend to acknowledge the liability of the Government to every individual who had voluntarily paid to any one of its officers a sum in excess of the legal charge for property or services and did not give to that court the power to render judgment against it for such excess. There is nothing in the present record to show anything tantamount to objection and protest made at the time the fees and commissions were paid.

Does the act just quoted confer jurisdiction upon the court to hear this case? It does not expressly

do so. Section 2 authorizes repayment of fees in all cases where it shall *appear to the satisfaction of the Secretary of the Interior* that any person has made payments under the land laws "in excess of the amount he was lawfully required to pay under such laws." Section 3 merely specifies the administrative procedure incident to the issuance of a warrant "in any case where repayment is authorized by this statute." The record shows that a claim for repayment under the act was submitted to the Secretary of the Interior. But it did not appear to his satisfaction that an excessive fee had been paid, and the claim was disallowed. If such a decision involved only a question of fact, the Secretary's determination was conclusive, and the court had no power to review it. But if his decision involved a question of law (as it apparently did) it is necessary to determine whether the repayment act conferred appellate jurisdiction upon the Court of Claims to review that decision.

The case of *Nichols* v. *United States*, 7 Wall. 122, announced the principle that where a liability and a remedy are created by the same statute, the remedy thus provided is special and exclusive.

It was held in *United States* v. *Kaufman*, 96 U. S. 567, that where the Commissioner of Internal Revenue had allowed a claim arising under section 3426, Revised Statutes, such allowance was equivalent to an account stated between private parties and binding on the United States, who thereupon im-

pliedly promised to pay it. If payment was refused by the accounting officers, a claim for the amount allowed became one that was founded on a law of Congress within the meaning of that term as used in defining the jurisdiction of the Court of Claims.

United States v. *Savings Bank*, 104 U. S. 728, is a similar case, differing only in the fact that the commissioner's allowance was made under the authority of section 3220, Revised Statutes. The decision in the Kaufman case was approved, the court taking occasion to say: "A rejected claim may be prosecuted against the collector (the remedy provided by the internal revenue system), and an allowed claim, not paid, may be sued for in the Court of Claims."

The doctrines announced in the foregoing decisions were approved and applied in *Medbury* v. *United States*, 73 U. S. 492, in which case the court held that where a statute creates a special right without at the same time providing a special remedy for its violation a remedy can properly be sought in a general statute other than that which creates the special right. The right created by section 2 of the repayment act of 1880 (21 Stat., 287), under which that suit originated, was the right to be repaid the difference between the double minimum price and the minimum price "for land which has afterwards been found not to be within the limits of a railroad land grant." The claimant proved "the facts which the statute provides," and thereupon became entitled to a warrant. The warrant was not issued, and his

right was thereby violated. But the repayment act which created his right provided no remedy for its violation. He therefore filed a petition in the Court of Claims setting forth the facts found by the secretary, alleging that those facts were the very ones "which the statute provides" as the condition precedent to the creation of his right and praying judgment for the amount that the warrant to which he was entitled under the act should have carried. The court had jurisdiction of his claim since it was one "founded on a law of Congress within the meaning of that term as used in defining the jurisdiction of the court."

It appears from the foregoing cases that there are two important preliminary questions that must be determined in order to judge of the lower court's jurisdiction. What is the right created by the repayment act, and has that right been violated? How are these questions to be answered in the present case?

It has been seen that, prior to the passage of the repayment act of 1908, appellant had no legal right to recover whatever excessive fees he might previously have paid. But, as said in the Medbury case, the statute created a right to have repayment *under the facts therein stated.* That is to say, Congress granted him the right to obtain a warrant for the repayment of whatever excessive fees and commissions *the Secretary of the Interior should be satisfied* he had been required to pay when he was perfecting his entry. If,

upon application to the Secretary that officer was satisfied that appellee had made payments in excess of those required by law, a right in his favor was immediately created, and if the Secretary refused to certified the amount to the Secretary of the Treasury, or if he did so certify the amount and the Treasury refused to issue the warrant, appellant's right would have been violated and the Court of Claims could take jurisdiction under the doctrine announced in the cases cited. His claim would be founded upon a law of Congress; his remedy would be furnished by another law of Congress—not the same one which created his right.

But in the case here presented appellee has failed to show the creation of a right. It necessarily follows that there has been no violation of right upon which a claim could have been presented to the lower court. The condition declared by the repayment act to be precedent to the creation of any right in appellant has not, it is admitted, been fulfilled. The petition sets forth the very fact which defeats the acquisition of a right under the repayment act, the fact that the Secretary disallowed the claim because he was not satisfied that an excessive payment under the law had been made. There has been, therefore, no violation of any right, and there is not presented here a claim founded upon a law of Congress within the meaning of that term as used in defining the jurisdiction of the Court of Claims. Appellee's claim is one founded wholly upon an interpretation of the land laws under circumstances which make it im-

possible for the court to consider it, as was decided in the Edmonston case, *supra*. To sum up: His right depended in no respect upon the correctness of the Secretary's decision, but only upon the actual decision itself, and arose only upon an allowance of the application.

This conclusion does not in any way conflict with the decision in the Medbury case, but is supported by the application of the doctrine announced in that case and its predecessors. Section 2 of the repayment act of 1880 differs materially from section 2 of the repayment act of 1908. In the former a positive right is created when particularly specified facts exist. No exclusive power is given the Secretary to determine whether the facts as found by him are of the character specified in the act. He "shall cause to be repaid" $1.25 per acre "in all cases where parties have paid double minimum price for land which has afterwards been found not to be within the limits of a railroad land grant." The right thus created is similar to the right which was considered by the lower court in the case of Robert Billings (50 C. Cls. 328), which arose under section 1 of the act now under consideration. It is to be noticed that sections 1 and 2 of this act are as dissimilar as the first and second sections of the said act of 1880 considered in the Medbury case. The condition precedent to the creation of a right under section 1 of the 1908 statute is not the allowance by the Secretary of an application presented to him, but it is the existence of the fact that an applicant

for entry on the public lands has afterwards had his application, entry, or proof "rejected." In other words, section 1 of the 1908 statute is similar to section 2 of the act of 1880; whereas section 2 of the former act is similar to section 1 of the latter.

To decide that the lower court had jurisdiction of the instant case will, it is respectfully submitted, necessitate a decision which goes far beyond the limits of and conflicts with the principles established in the cases heretofore decided.

SECOND.

The fees and commissions paid by appellant were lawfully demanded and collected and hence the judgment should be reversed.

This case turns upon the lawful price of public lands in odd-numbered sections within the primary limits of the Northern Pacific Railway land grant, subsequent to the enactment of the grant, the filing of the general route map, and the withdrawal of the odd-numbered sections from entry, and prior to the forfeiture of that portion of the grant concerned.

The act of July 2, 1864 (13 Stat. 365), granted to the railroad company—

> * * * every alternate section of land * * * designated by odd numbers * * * (within the primary limits designated) whenever * * * the United States shall have full title, not reserved * * * or otherwise appropriated, and free from preemption or other claims or rights at the time the line of said road is definitely fixed.

By force of the construction placed upon the grant by the court in *Nelson* v. *Northern Pacific Railway Co.*, 188 U. S. 108, public lands within the primary limits are divided into these classes: (1) Odd-numbered sections, or parts thereof, not subjected prior to definite location to preemption or homestead rights, nor reserved or otherwise appropriated; (2) those parts of the odd-numbered sections reserved or otherwise appropriated prior to withdrawal upon the map of general route; (3) those parts of the odd-numbered sections subjected after withdrawal and prior to definite location, to preemption or homestead rights; (4) the even-numbered sections.

In its decision the Court of Claims held:

> The case presents the single question: Was the land entered subject to entry under the preemption laws in the face of the grant of the same lands to the railroad company? If so, the legal charge was one dollar and a quarter per acre. It is, of course, quite evident that if by filing the map of general route the railroad company acquired the full extent of its grant, each alternate odd section for twenty miles on each side of its proposed line, then the land entered by the plaintiff belonged to the company and the entry should not have been received at all, for it was not made until 1878 and the map was filed in 1870; keeping in mind that in any event the plaintiff's entry was part of an odd-numbered section and not embraced within the even-numbered sections reserved by the Government, which under the law could not be dis-

posed of for less than two dollars and fifty cents per acre.

Thus the court was of the opinion that if the land involved in the purchase was excepted from the railway grant, although within the geographical limits of the granted area, it followed as a matter of course, that the price must have been $1.25 per acre. In reaching this conclusion the case of *Nelson* v. *Northern Pacific Railway Co.*, *supra*, appears to have been relied on, although no question whatever as to the price of the land was involved in that case.

In its decision the Court of Claims concedes that the effect of the withdrawal by the Interior Department of the odd-numbered sections upon the filing of the map of general route was to raise the price of the even-numbered sections to $2.50 an acre. The conclusion of the court that the withdrawal was without effect upon the price of public lands in the odd-numbered sections was reached without consideration of or reference to any applicable law or decision of the department or the courts.

It is not difficult to answer the question as to why, in the grant to the Northern Pacific Railroad Company and other like grants, the price of the even-numbered sections was fixed, and no reference was made to the price of the odd-numbered sections. As to the lands that passed to the railroad company, the consideration was expressed in the granting act. As to the lands settled upon prior to withdrawal, the price was fixed by the act of March 27, 1854

(10 Stat. 269), now section 2281 of the Revised Statutes, which provides that:

> All settlers on public lands which have been or may be withdrawn from market in consequence of proposed railroads, and who had settled thereon prior to such withdrawal, shall be entitled to preemption at the ordinary minimum to the lands settled on and cultivated by them.

As to the lands occupied by preemption or homestead settlers *after* withdrawal and prior to the filing of the map of definite location, the act of July 2, 1864 (13 Stat. 374), approved on the same day as the granting act here involved, and now embodied in the Revised Statutes as section 2364, provides:

> Whenever any reservation of public lands is brought into the market, the Commissioner of the General Land Office shall fix the minimum price, not less than one dollar and twenty-five cents per acre, below which no lands shall be disposed of.

It can not be disputed that under the decision in the case of *Nelson* v. *Northern Pacific Railway Co.*, *supra*, the land entered by Laughlin was reserved from the grant, nor that it was reserved from disposition, pending adjustment of the grant by the Interior Department's withdrawal order of 1872, nor that it was brought into market and disposed of by the Commissioner of the General Land Office at the price of $2.50 per acre upon the written relinquishment or waiver of claim by the Northern Pacific Railroad Company.

It is clear, therefore, that unless the withdrawal of this land in 1872 by the Interior Department was null and void and not a reservation thereof, the Commissioner of the General Land Office was acting within his authority when he set the price of these lands at $2.50 per acre, which appellee voluntarily paid. The holding in *Nelson* v. *Northern Pacific Railway Co.*, *supra*, that rights could not be created or defeated by the Department's withdrawal of land from the exercise of a right guaranteed by the land grant act, namely, occupancy, in nowise challenges the efficiency of that withdrawal as a reservation of the land from the market pending a final determination of the rights of the grantee company. The validity of that withdrawal is established and its force defined by decisions of this court. *Wolsey* v. *Chapman*, 101 U. S. 755, 768–770; *United States* v. *Midwest Oil Company*, 236 U. S., 459.

It was no more unreasonable or arbitrary to exact double minimum prices for lands in odd-numbered sections after withdrawal upon general route and prior to definite location of the road than to exact a like price for lands in the even-numbered sections, the propriety and validity of which is conceded by the court in *Nelson* v. *Northern Pacific Railway Co.*, *supra*. The remedy in either case was not for the determination of the Department of the Interior but of Congress, which, by section 4 of the act of March 2, 1889 (25 Stat. 854), provided:

> That the price of all sections and parts of sections of the public lands within the limits

> of the portions of the several grants of lands to aid in the construction of railroads which have been heretofore and which may hereafter be forfeited, which were by the act making such grants or have since been increased to the double minimum price, and also, of all lands within the limits of any such railroad grant, but not embraced in such grant lying adjacent to and coterminous with the portions of the line of any such railroad which shall not be completed at the date of this act, is hereby fixed at one dollar and twenty-five cents per acre.

Had not the land involved in this proceeding been previously disposed of, its price would have been reduced to the minimum by that act, which, however, by its very terms, refutes any argument that the double minimum price exacted of Laughlin was in excess of legal requirements in 1878.

The conclusion that the price of the land involved in this case was legaly $2.50 per acre is not only supported by the reasons stated but by considerations applicable to all public lands in the odd-numbered sections of a railroad grant, title to which did not pass to the grantee for any reason whatsoever.

It has been noted that there were reserved from this grant, first, the alternate even-numbered sections, and second, alternate odd-numbered sections or parts thereof reserved or otherwise appropriated or subject to preemption or other claims or rights at the time the line of said road was definitely fixed. The price of the alternate reserved sections was

fixed at $2.50 per acre. This was true also of many similar land grants. Naturally, the question soon arose whether the double minimum price was required by the law as to all reserved lands within railroad limits, or was applicable only to those in the alternate even-numbered sections. It is believed that it was for the purpose of removing such a doubt that Congress, in adopting the Revised Statutes, deliberately changed, in section 2357, the word "sections," as it occurs in the granting acts, to "lands" and required $2.50 an acre for "alternate reserved *lands* along the line of railroads within the limits granted by *any* act of Congress." While it may be conceded that it would have added to the clarity of the requirements had the word "alternate" been omitted, it is obvious that reserved lands in the alternate odd-numbered sections are as much "alternate reserved lands" as are those reserved in the even-numbered sections. The reasons that induced the phraseology of section 2357, Revised Statutes, *supra*, were doubtless those alluded to by Secretary Teller in the case of *Clark* v. *Northern Pacific Railroad Co.*, 3 L. D. 158, and by this court in the case of *United States* v. *Healey*, 160 U. S. 136, wherein it was stated that—

> The principal, if not the only, object of the requirement that the alternate reserved sections along the lines of land-grant railroads should not be sold for less than double the minimum price fixed for other public lands, was to compensate the United States for the

loss of the sections given away by the Government.

This reasoning is as applicable to the odd as the even-numbered sections, since if the grant of the odd-numbered sections to the railroad be defeated for any cause, the right of indemnity attaches to an equal quantity of public land. See also in this connection *United States* v. *Ingram*, 172 U. S. 327.

While the occasion of the restoration of this land to entry and the allowance of the claim of the appellee was the filing of a relinquishment by the railroad company pursuant to the act of June 22, 1874 (18 Stat. 194), none of the provisions of that act have any bearing upon the determination of this case. The railroad company not only never, by the decision of the land office, was declared to have any right to these lands (having relinquished same), but it is clear from the facts of the case that it never, in fact, had any right. Under such circumstances, this department has uniformly held that the act has no application. The practice of the General Land Office in permitting relinquishments in cases like this was to expedite the perfection of settlement claims, while saving to the railroad companies any rights they might have under the act referred to, to be determined upon the final adjustment of the grant.

Respectfully submitted.

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Solicitor of the Department of the Interior.

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